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CLERK U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
CANTONUNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: ) CHAPTER 7  
 )  
GARY ROCK, ) CASE NO. 08-60582  
 )  
Debtor. ) JUDGE RUSS KENDIG  
 )  
 )  
 ) MEMORANDUM OF OPINION  
 ) (NOT INTENDED FOR  
 ) PUBLICATION)

This matter is before the court on Debtor's Application to Proceed *In Forma Pauperis* (hereafter "application") filed on March 3, 2008.

Following passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, debtors are permitted to seek a waiver of the bankruptcy filing fee. Pursuant to 28 U.S.C. § 1930(f), a "bankruptcy court may waive the filing fee . . . if the court determines that such individual has less than 150 percent of the income official poverty line . . . applicable to a family of the size involved and is unable to pay that fee in installments." By the terms of the statute, a court's ability to waive the fee is permissive, not mandatory ("may waive"), and is premised upon a finding that a debtor meets the income and inability to pay in installments criteria.

The court will first determine whether Debtors' income is 150 percent of the poverty level. According to the Department of Health and Human Services 2008 Poverty Level Guidelines, available at <http://aspe.hhs.gov/poverty/08poverty.shtml>, the poverty income for a family of one is \$10,400.00. At 150 percent of poverty, the poverty income for this family is \$15,600.00 annually, or \$1,300.00 per month.

According to the application, Debtor's total monthly combined income is \$996.00 per month, derived from \$898.00 in social security benefits and \$98.00 in food stamps. Schedule I comports with this information. Further, Debtor attested that he has not been employed in 2007 or 2008, has no wages to report, and is not required to file tax returns. Based upon the information provided by Debtor, the court finds that he earns less than 150% of the poverty income and has established the first prong of the test.

Next, the court must determine if Debtor has the ability to pay the filing fee in installments. Upon review of Debtor's Schedule J, the court concludes that Debtor is not able to pay the filing fee in installments. Debtor's budget shows a monthly shortfall of \$155.20; Debtor's expenses are reasonable. There is no room in the budget to make up the shortfall, let alone add an installment payment for the filing fee. Thus, the court finds

that the Debtor does not have the ability to pay the filing fee in installments and has satisfied the second prong of the test.

In light of the above, the Court hereby **GRANTS** Debtor's application to waive the filing fee.

An order in accordance with this decision shall be issued immediately.

*/s/ Russ Kendig*

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RUSS KENDIG  
U.S. BANKRUPTCY JUDGE

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